IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9109 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMJIBHAI KALUBHAI KIHLA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9109 of 2003

MR SHAKEEL A QURESHI for Petitioner No. 1

MR RM CHAUHAN ld. AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Rajkot city on 5.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner is actually detained on 5.4.2003.

The grounds furnished to the petitioner and placed on record as Annexure-B clearly reveal that the detaining authority has placed reliance on two kinds of materials. Firstly, the offences registered against the petitioner and secondly in-camera statements of the witnesses. In the grounds it is mentioned that on 25.3.2003, 24.3.2003 and on 26.3.2003 three offences came to be registered against the petitioner under sec. 379 and 114 of IPC wherein two Hero Honda motor-cycles as well as one Bajaj Boxer Motor-cycle were recovered. The in-camera statements recorded by the proposing authority on 1.4.2003 and verified by the detaining authority on 3.4.2003, in both these statements generally it is alleged by the witnesses that the petitioner is not engaged in any employment for gain and his only activity is to commit theft of two wheelers. In his activity, petitioner and his associates creates terror and fear in the city. Due to their fear, nobody comes forward to complain before the police. The witnesses have referred individual quarrel occurred on 14.12.2002 and 23.2.2003. From the above material, the detaining authority came to pass the order of detention impugned in this petition.

Ld. advocate Mr. Radhanpurwala for the petitioner and ld. AGP Mr RM Chauhan for the respondents were heard at length.

The various contentions raised and controverted by the ld. AGP. From the rival contentions and from the record, the contention raised on behalf of the petitioner whether the activity of the petitioner was prejudicial to the maintenance of public order is required to be discussed and decided. Ld. AGP has vehemently urged that the witnesses have stated sufficiently and relied upon by the detaining authority rightly that due to the activity of the petitioner the public order was disturbed. Now, when the question arises as to maintenance of law and order and maintenance of public order, than the case has to be scrutinised having regard to the facts of each case. The objectionable activities alleged in the detention order has to be carefully screened to come to the conclusion in respect whether the questionable activity amounts to prejudicial to the maintenance of public order. While undertaking this exercise, the length, magnitude and intensity of questionable activity will have to be judged and to decide that whether the detaining authority has reached to subjective satisfaction properly. So far as the facts of the present case is concerned, undoubtedly, the crimes registered against the petitioner are in respect of theft of two wheeler vehicles and even if those activities are

taken to be steeling of the vehicles, itself, it could be hardly said that those activities are prejudicial to the maintenance of public order. True, it may be that due to theft of vehicles, the citizen may become more vigilant but in no case it could be said that by theft of vehicles, the public order could be disturbed. These incidents could never be construed to be adversely affecting the public tempo or public life or public peace in locality or in city or in town. The gravity and potentiality of the questionable activity in this particular case cannot by committing theft said to have disturbed the public order. Than the remaining material which the detaining authority relied are the statements of two witnesses as aforesaid. On going through the statements carefully, each incident discloses an individual quarrel between the witness and the petitioner. Though in the statements, a general allegation is made against the petitioner that the petitioner is a head-strong person and with his associates create terror and fear in locality. Even than the witnesses relate this activity of the petitioner with the activity of the petitioner of stealing of the vehicles. Mere general statements of witnesses of this sort cannot constitute material to draw inference that by such questionable activity the public order was disturbed. When the incidents were relied upon by the detaining authority, the same relates to individual quarrel only.

Therefore, in this view of the matter, the order impugned in this special civil application is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 5.4.2003 by the Police Commissioner, Rajkot city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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